IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.75 OF 2007

WITH

CIVIL APPLICATION NO.111 OF 2007

Shri Ritesh Sham Kolan & Ors. ...Appellants

Versus

Smt.Champabai Harakchand Kolan
& Ors. ...Respondents

.....

Mr.A.Y.Sakhare with Mr.Karpe i/b M/s.YKS Legal for Appellants.

Mr.Girish S.Godbole for Respondents 4, 5, 7 to 9 & 9(B).

Mr.Sandeep D.Paigude for Respondent No.6.

.....

CORAM: A.M.KHANWILKAR, J.

FEBRUARY 28, 2007.

P.C.

1. Heard Counsel for the parties.

2. I see no infirmity in the view taken by the Court below. The Court below in the fact

situation of the present case has rightly reached the conclusion that the Plaintiffs were not entitled for any interim relief. The Court below has taken note of the fact that the Plaintiffs suppressed material facts from Court and made misleading statement in the pleadings when in fact the construction of 27 buildings was almost completed at the relevant time. Development of the property commenced from 2004 onwards, whereas the Suit has been filed only in June 2006, when construction of 27 buildings was almost completed. Besides, the Court below has rightly noted that there is no pleading in the Plaint that the suit property is ancestral property of Late Harakchand Kolan or Late Harakchand Kolan purchased the same along with other co-owners out of joint family nucleus. If it is so, the Plaintiffs who are claiming through Defendant No.2, cannot be heard to say that the transaction entered into by concerned Defendant is not binding on the Plaintiffs. The concerned Defendants, except issuing notice of termination of the Agreement have not taken any further steps to restrain the builder from proceeding with the construction activity on the

site in terms of the Agreement executed on 29th November 2002. The Trial Court has also rightly considered the fact that the present Suit is a collusive Suit. The circumstances as to why the Suit is a collusive Suit have been inferred by the Trial Court, as can be discerned from Paragraph 19 of the Judgement, which is a possible view.

3. Taking overall view of the matter, no case for interference is made out. Hence, dismissed.

4. In view of the above order, companion Civil Application stands disposed of.

A.M.KHANWILKAR, J.